

## TABLE OF CONTENTS

|   | Page |
|---|------|
| The Texas System Assures No Minimum .....   | 1    |
| Texas Facts Should Decide Texas Case .....  | 3    |
| Public School Attendance Is Mandatory ..... | 3    |
| This Case Should Be Remanded .....          | 4    |

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1972

---

NO. 71-1332

---

**SAN ANTONIO INDEPENDENT SCHOOL  
DISTRICT, ET AL.,**

*Appellants*

**v.**

**DEMETRIO P. RODRIGUEZ, ET AL.,**

*Appellees*

---

**PETITION FOR REHEARING**

---

**THE TEXAS SYSTEM ASSURES NO MINIMUM**

Plaintiffs plead and proved that the Minimum Foundation Program does not *assure* any minimum educational program. Defendants were challenged throughout the litigation to show what minimum is assured. Defendants made no attempt to answer that challenge until they filed the REPLY BRIEF FOR APPELLANTS. At pages 15-16 of that brief, Defendants for the first time stated what they claim to be the minimum. Defendants recognize therein that the program only *allots* teachers and supportive personnel. The Court, however, has been misled into taking the position that these teachers and other supportive personnel are *assured*. The Court states the following:

"The State's contribution, under the Minimum Foundation Program, was designed to provide an adequate minimum educational offering in every school in the State. Funds are distributed to assure that there will be one teacher - compensated at the state-supported mini-

minimum salary - for every 25 students. Each school district's other supportive personnel are provided for: one principal for every 30 teachers; one 'special service' teacher - librarian, nurse, doctor, etc. for every 20 teachers; superintendents, vocational instructors, counselors, and educators for exceptional children are also provided."

The Court is factually in error, and the error is fundamental. The Texas system does not assure a single teacher. The Minimum Foundation Program sets minimum salaries and provides allotments, for example, of one teacher for every 25 students. However, each district is "free" to pay any salary above that minimum and hire any number of teachers above that statutory allotment. Edgewood cannot pay salaries comparable to those paid by the other school districts. Teachers go to the better paying school districts. As a consequence Edgewood does not get sufficient qualified teachers to meet the allotted ratio of one teacher for every 25 students. (A. 237; Cardenas Deposition, p. 9). The statistics consistently proved that Edgewood is not assured and does not have one teacher for every 25 students (for example, A. 237), or any other minimum allotted personnel.

By the statutory allotment, the State has prescribed what it believes to be a minimum quantitative standard of teachers and other supportive personnel. Professional unit allotments are contingent upon the employment of qualified personnel, and upon the payment of not less than the minimum salary as prescribed in Sec. 16. Texas Education Code, Sec. 16.11(b). If the school is not able to provide the teacher, it does not get the Foundation funds. (Graham Deposition, p. 76). In operation, the State system precludes Edgewood from ever achieving what the State prescribes as a minimum.

The same problem arises with the regional media and service centers related to by the Defendants in their Reply Brief and prescribed in the Texas Education Code. Sec. 11.32 and Sec. 11.33. In order to participate in the program, the school district must put up matching funds under Sec. 11.32 (k). Edgewood does not have the matching funds, and therefore is entirely precluded from participating in this program. (A. 238).

## TEXAS FACTS SHOULD DECIDE TEXAS CASE

The Court cites statistics from other states for the proposition that the poor do not reside in poor districts. As Mr. Justice Rehnquist stated in oral argument, Plaintiffs should be entitled to stand on the record in Texas. In the case of *West Orange-Cove Con. I.S.D. v. County Bd. of School Tr.*, 430 S.W. 2d 65 (Tex. Civ. App. 1968) ref. n.r.e., it is illustrated that in Texas the poor are helpless. The Orange Independent School District was the big majority district. West Orange-Cove Consolidated Independent School District was a poor area that Orange did not seek to have as a part of its school system. After World War II, large refineries were built in the West Orange-Cove Consolidated Independent School District. The anomaly occurred: the poor people lived in a rich school district.

The Texas system may allow this to occur, but the system provides ways to prevent its continuance. The usual method of consolidating districts is for the majority in both districts to vote for consolidation. (A. 55). Rich districts do not vote to consolidate with poor districts. In Texas, there is a special method only for those in power. The Orange District dissolved itself and let the County Board of School Trustees attach it to the West Orange District. In the next election, it was a simple matter to completely take over the district, its funds and its control.

## PUBLIC SCHOOL ATTENDANCE IS MANDATORY

The Court noted the importance of education. It is emphasized in Texas by the fact that every constitution of the State has mandated State-financed public schools. The Court did not address itself to the fact that the State mandates the child to go to public school. (Texas Education Code, Sec. 21.032). The child has no choice. Without any process of law and without any right to choose, children are imposed upon by the State with an obligation to participate in a system that unjustly discriminates against them.

The State can make education mandatory. If the State does this, is it not bound to make it available on equal terms? Under the present Texas system, it is education for some

and punishment for others. The Fourteenth Amendment gives no substantive rights, but it is the safeguard against State imposed discrimination.

### **THIS CASE SHOULD BE REMANDED**

Alternatively, Plaintiffs pray that the Court remand this case to the Trial Court. Plaintiffs prayed alternatively in their Complaint (A. 28) that the Court order that the Defendant school districts in Bexar County be abolished, and that the County School Trustees be convened to establish the new boundary lines for a school district or districts, and that the Court order that the lines be drawn so that the property values in each of the resulting school districts be approximately equal with regard to value of taxable property per school child. The Defendants gave no rational reason for the school district boundary lines, agreed that there are no natural geographic reasons for their existence, and agreed that district boundary lines serve no educational function. (Graham Deposition, p. 41; Edgar Deposition, p. 8; A. 53). The Trial Court should be allowed to make a decision on granting such alternative relief.

**Respectfully submitted,**

**ARTHUR GOCHMAN  
WARREN WEIR  
MARK G. YUDOF  
MARIO OBLEDO  
MANUEL MONTEZ**

By: \_\_\_\_\_  
Arthur Gochman  
331 Travis Park West  
San Antonio, Texas 78205  
*Attorneys for Appellees*